

INITIAL STATEMENT OF REASONS (ISOR)

This action will adopt revisions to Title 15, Subchapter 2, Division 3, Article 7 of the California Code of Regulations (CCR) governing the processes, approvals, and requirements authorizing inmates to receive visits from their family, friends, and legal representatives at California Department of Corrections (CDC) institutions and facilities. The primary objective of this action is to standardize visiting procedures system-wide, provide more specificity and define terms in areas where needed, remove procedural material in the existing regulations more appropriately placed in the departmental operations manual, and incorporate updated references to the Penal Code.

These regulations repeal the entire Article of the CCR governing visiting (Sections 3170 through 3179) and readopt a new reorganized Article that has been rewritten for clarity and easier reference by staff, inmates, and visitors. While many specific regulatory provisions are retained in virtually unchanged form, a complete repeal and amended re-adoption of the regulations was selected to facilitate public review and understanding of the visiting process in total from beginning to end. This approach also includes recognition that the extensive reorganization of the material and numerous clarifying edits would be very difficult to follow if the changes were made retaining the original text.

To further address this issue, this document describes each new section and provides appropriate references to current regulations. While a complete rewrite of the current visiting regulations also presents some challenges, our goal is to clarify current policy and standardize procedures system-wide while presenting the regulations in sequential order to facilitate maximum visiting process understanding and compliance by all users. In this regard, several previously referenced regulatory sections are incorporated directly into the visiting section and the regulations within the visiting section are now organized in sections that group all similar process provisions (i.e. application, approval/disapproval, visitor processing) in one place for easy reference.

CDC's commitment to the value of visiting for establishing and maintaining meaningful family and community relationships is retained in the initial paragraph of the new regulations, as well as the desire to be as accommodating as possible while operating a safe, secure, and orderly inmate visiting program. These regulations incorporate identified program needs and the security that will be required for each program - inmates with Administrative Segregation and Security Housing Unit status will be most restricted while those involved in work and academic programs, with no disciplinary infractions, are least restricted. In adopting these regulations, CDC seeks to standardize many processes that were formerly subject to local interpretation, while retaining some appropriate flexibility of benefit to individual institutions and facilities and their visitors.

Existing Article 7, Sections 3170 through 3179, is repealed.

Section 3170 is adopted to retain language in former Subsection 3170 (a) indicating CDC support for inmate visiting and a departmental commitment to be as accommodating as possible to the visiting process consistent with good order, safety, and security while respecting required prison activities and operations.

Subsection 3170 (a) is adopted to include applicable provisions from Section 3044 regarding the allowance of visits only during non-working hours for inmates with full time work/training assignments. These provisions are restated here for easy reference to ensure that inmates are involved in work and academic programs consistent with Penal Code Section 2700, subject to the limitations in Section 3045.2.

Subsection 3170 (b) is adopted to retain provisions in former Subsection 3170 (f), regarding privacy afforded the inmate and visitor. Permissive use of video recording devices has been added to this section. These devices will serve two primary purposes. The first is as a deterrent to misconduct and the introduction of non-permitted items, commodities, and substances to the visiting area. Secondly, should misconduct occur, the video may be used as evidence.

Subsection 3170 (c) is adopted to ensure that visitors who have been approved to visit an inmate at one institution will continue to be approved at the receiving institution upon an inmate's transfer. This change was requested by visitors and should make the transfer process less burdensome for visitors.

Subsection 3170 (d) is adopted to retain general temporary visiting suspension criteria from former Subsection 3177 (c) (11) and to add more clarification regarding visiting modifications in response to emergencies. The new language adds institution options to resolve resource conflicts with other prison activities under former Subsection 3170 (e). This clarification makes clear the priority need for staff to be fully available to assist during emergencies, and requires that notification regarding modifications be made as soon as practical.

Subsection 3170 (e) is adopted to retain and clarify current practice under former Subsections 3170 (c) and 3171 (c) to ensure that no limitation is placed upon the number of visitors approved to visit an inmate. Limitations on the length and frequency of visits under certain circumstances are specifically cross-referenced to new Section 3176. Also added to these regulations is long-standing policy limiting the number of visitors at any one time to five for contact visits and three for non-contact visits. These limits have proven effective by ensuring other inmates receive visits given limited visiting space and are placed in regulation as a clarification of the need to provide "a fair allocation of visiting resources" in former Subsection 3170 (e).

Subsection 3170 (f) is adopted to retain former Subsection 3173 (k) to accommodate visitors by allowing visits to more than one inmate.

Subsection 3170 (g) is adopted to retain former Subsection 3170 (d) essentially verbatim to ensure that as a general matter devices that prohibit physical contact with a visitor are utilized only as necessary in prescribed circumstances. The circumstances are detailed and appropriate cross-references have been added to non-contact visiting provisions in Section 3170.1.

Subsection 3170 (h) is adopted to emphasize compliance with the requirements of the federal Americans with Disabilities Act (ADA).

Subsection 3170.1 (a) is adopted to retain basic language of when and where visiting is permitted from former Subsection 3173 (a) and remains unchanged.

Subsection 3170.1 (b) is adopted to limit all reception center visiting to non-contact visits only. This long-standing departmental policy is imposed for the safety and security of visitors and staff while the process of identifying and classifying new inmates is completed. The institution head is given latitude to establish alternatives to non-contact visiting to address physical plant deficiencies and an exception is provided for disabled inmates to receive contact visits if they remain at the reception center more than 60 days.

Subsection 3170.1 (c) is adopted to ensure inmates who are assigned to the Administrative Segregation Units and Security Housing Units (SHU) receive only non-contact visits. This restriction is based upon safety and security concerns arising from the inmate's demonstrated behavior history that may include acts of violence against staff or other inmates. The scheduling of visits in one-hour increments, subject to extension based upon availability, is added to reflect current practice to "fairly allocate visiting resources" to all similarly housed inmates given the large number of inmates and the lack of availability of non-contact booths. The restriction of SHU Term inmates to visiting with immediate family members only likewise reflects the concern that these inmates have demonstrated that they pose a serious safety or security threat to the institution due to involvement in acts of violence or possession of weapons.

Subsection 3170.1 (d) is adopted to implement policy that inmates who are convicted of certain drug related offenses do not receive contact visits for the first year of their incarceration. Since the inmate's incarceration was caused by their willingness to sell, manufacture, or distribute controlled substances, CDC restricts these inmates to non-contact visiting status to prevent these individuals from immediately continuing their enterprise.

Subsection 3170.1 (e) is adopted to retain former provisions in Subsection 3173 (i) regarding inmate refusals to see visitors and adds a specific request procedure for an inmate to use when they wish to have a visitor removed from their approved visiting list.

Subsection 3170.1 (f) is adopted to retain former Subsection 3173 (j) regarding permissible exchanges and to add language to clearly state that inmates may not

possess contraband (defined in Section 3006) in visiting. This provides requested clarification to address situations in which visitors leave items with the inmate (e.g. identification cards) which are considered contraband when later found in an inmate's possession following the visit. A cross-reference to Section 3178 is also added which specifies the procedures for exchange of items during an attorney visit and consultation.

Subsection 3171 (a) is adopted to retain the requirements of former Subsection 3171 (a) that each institution head to maintain procedures for inmate visiting at their respective institution/facility and to ensure that the procedures conform with the rules and regulations set forth in this article. This language reinforces the primary emphasis of this revision to provide standardization of visiting processes system-wide. This subsection also retains language from former Subsection 3170 (e) relating the degree of informality of inmate visiting to the overall security requirements of each institution/facility.

Subsection 3171 (b) is adopted to retain the requirements of Subsection 3171 (b) to ensure inmates and their visitors are informed regarding the visiting rules, regulations, procedures, and schedule. The regulations specify the minimum information to be contained in the written summary utilized for this purpose, and adds a requirement that the information be conspicuously displayed at public entrances to the institution/facility and be available to any interested person. The purpose here is to facilitate maximum visiting process understanding and compliance by all users.

Subsection 3171 (c) is adopted to retain former Section 3172 establishing that each inmate and visitor is responsible for his or her own conduct during visits. The subsection lists and provides a cross-reference to the penalties that can be imposed for violations of the rules set forth in this article.

Subsection 3172 (a) is adopted to establish a standard visitor application process initiated by the inmate by forwarding a visiting application form to their prospective visitors. In addition to the obvious benefits to standardizing the process system-wide, it also provides the inmate with control over who they are inviting to visit. This approach reflects current departmental practice and has been generally well received.

Subsection 3172 (b) is adopted to require that all visitors, including minors, provide a completed standardized CDC Form 106, Visiting Application, and obtain approval from the institution/facility prior to visiting. This use of a single application form standardizes the process system-wide. The inclusion of minors in the approval process allows CDC to verify the identity of all visitors and review the arrest history of all prospective visitors including minors.

Subsections 3172 (b) (1) and 3172 (b) (2) are adopted to clarify current policy and documentation necessary for emancipated minors and minor legal spouses to apply to visit as adults.

Subsection 3172 (c) is adopted to require that a parent or legal guardian complete a visiting application on behalf of a minor not applying as an adult. It is clearly in the interest of CDC and the minor to require full participation from the parent or legal guardian in the application process for a minor visitor. This subsection retains and expands former Subsection 3173 (g) requiring prior approval for unchaperoned minor children or siblings to visit if their parent or legal guardian does not accompany them.

Subsection 3172 (d) is adopted to require that visitors update their visiting applications immediately for any change of name, address, phone number, or arrest history and complete a renewal every two years. In addition to obvious benefits to institution security of knowing the current criminal history status of all visitors, maintain current contact information can be of considerable assistance in case of escape or if emergency notification is required. Most institutions have required updated applications on an annual basis. The two-year standard is adopted as sufficient for this purpose based upon experience.

Subsection 3172 (e) is adopted to require visitors submit a new application to visit when an inmate is returned on a parole violation or admitted to a substance abuse treatment control unit while on parole. Experience indicates that this will almost always expedite the approval process to visit since inmate visiting records may be difficult to locate or unavailable from the parole or archive unit.

Subsection 3172 (f) is adopted to streamline former Subsection 3173 (k) to allow a visitor to submit one application for a number of inmates at various institutions. This should reduce paperwork for application processing for CDC and the visitor.

Subsection 3172 (g) is adopted to increase the number of options available for applicants to return visiting applications at all institutions and facilities by direct personal delivery. This requested change accommodates an applicant wishing to expedite processing by not returning the application by mail. This new subsection continues current practice of excluding delivery of the application by the inmate to maintain integrity and confidentiality of the information provided by the applicant.

Subsection 3172 (h) is adopted to adopt long standing practice to mandate an inquiry into arrest history of all visitor applicants in reaching a decision on the application to visit. This information is clearly relevant to maintaining the safety and security of the institution/facility.

Subsection 3172 (i) is adopted to retain former Subsection 3173 (d) requiring a denial of visiting to a prospective visitor who refuses to consent to fingerprinting and a criminal records check when it is necessary to verify their identity. In some cases with common names, commingled Department of Justice (DOJ) files, or if several aliases are used, the only effective way to verify the identity of an individual is with fingerprinting. If it is requested, a refusal is disqualifying. The

new subsection continues to require that the DOJ file copies obtained for this purpose be destroyed when the application is approved. However, an exception has been added to retain the criminal records information when the application for visiting is denied. This provides documentation for the denial and retains this information for use if the applicant subsequently reapplies.

Subsection 3172 (j) is adopted to retain and streamline former Subsection 3173 (m) that specifically addresses the visiting application process for former inmates. Applications from former inmates must generally be made by mail since they are not allowed to come onto grounds for any reason without written permission from the institution head. Telephone requests may be considered in emergencies. Written consent from a case supervisor is also required for persons on parole, probation, or outpatient status.

Subsection 3172.1 (a) is adopted to retain former Subsection 3177 (a) that allows the institution head to delegate the authority to approve or deny visiting applications. To standardize the process, delegation will not be allowed below the rank of Correctional Sergeant or Parole Agent II.

Subsection 3172.1 (b) is adopted to readopt provisions for disapproving an application to visit in former Subsection 3177 (c). Two new reasons for denial are added in Subsections 3172.1 (b) (1) and (2). A visiting application will be denied if the applicant has outstanding arrests/warrants including a Department of Motor Vehicles Failure to Appear notice, or one felony within the last three years, two felonies within the last six years, or three or more felonies within the last ten years. In the first instance, requiring that any outstanding arrests/warrants be cleared prior to allowing a person to visit is pursuing legitimate law enforcement objectives. It also seeks to avoid situations in which CDC, as a law enforcement agency, is required to arrest visitors. Subsection (b) (2) sets a progressive standard based upon recentness of felony convictions for allowing a recently paroled/discharged inmate within the institution to visit. This sets a standard policy for all felons that may have been treated differently under local procedures and addresses former practices that generally denied access to felons altogether.

New Subsection 3172.1 (b) (3) readopts former Subsection 3177 (c) (5) that included convictions as a co-offender or for certain types of crimes related to correctional facilities. Clearly, persons convicted of distributing a controlled substance, transporting contraband, or aiding an escape are viewed as serious threats to the institution, staff, inmates, and the community, and should only be allowed to visit with express approval of the institution head. New Subsections 3172.1 (4) and (5) essentially readopt former Subsections 3177 (c) (6) and (7) respectively. These provisions continue to specify the conditions under which visiting is denied to former inmates, parolees, probationers, and civil addict outpatients. It is acknowledged that the net effect of these proposed changes appears to be the automatic denial of virtually all visiting applications of recent felons. While this may be prudent public policy, this approach reflects a practical

consideration that all of these applicants require special processing and special approval from the institution head for admission. It is preferable to move these applicants out of routine visitor processing at the front end and into an exception mode of requesting written permission from the institution head to be allowed to visit despite their status.

New Subsection 3172.1 (b) (6) readopts the provisions of former Subsections 3177 (c) (1) and (2) providing for denial if the applicant's identity or information is falsified or omitted. Reconsideration occurs when omitted information is provided. Added to this section is a six-month period of disqualification for providing false information on the application to establish a prudent and reasonable standard throughout CDC for this purpose. It is felt that a six-month period is sufficient to act as a deterrent.

Subsection 3172.1 (c) is adopted to retain former Subsection 3173 (l) for the approval or disapproval of a visiting application. The new section makes use of the CDC Form 887, Notice of Visitor Approval/Disapproval mandatory for this purpose. This will standardize this process system-wide. Inmates will receive a copy of the decision, and remain responsible for notifying visitors of approvals. If the application is denied, both the applicant and the inmate will receive a CDC Form 887. Since the form may include sensitive information regarding the reasons for the denial that the applicant may not wish to share with the inmate, such information will be redacted from the copy received by the inmate.

Subsection 3172.1 (d) is adopted to specifically add the right to appeal a disapproval of an application to visit and provide a cross-reference to the visitor appeal process described in Section 3179. The CDC Form 887 also contains information about appeal rights.

Subsection 3172.1 (e) is adopted to retain former Section 3172 that conditions visiting approval upon the applicant's compliance with all laws, regulations, and procedures governing visitor conduct on institution/facility property.

Subsections 3172.2 (a) through (c) are adopted to retain the visiting schedule requirements of former Section 3179. Visiting must be provided for no less than 12 hours a week, must include contiguous days, and include Saturday and Sunday. Visiting must also be available on specified holidays and include certain hours. A new provision is added to standardize and clarify when visiting is available state-wide regardless of whether it is operated four, three or two days per week at the particular site.

Subsection 3172.2 (d) is adopted to add a new scheduling standard when non-contact visits are required for inmates involved in certain commitment and disciplinary offenses. A one-hour time limit is adopted for scheduling to ensure that all such inmates who want them are able to receive a minimum one-hour non-contact visit. Visits may exceed one hour if space is available. This process has been in effect for some time and has worked well. It was established to

achieve a fair allocation of visiting resources and is necessary due to the lack of availability of non-contact booths and large number of inmates receiving non-contact visits.

Subsection 3173 (a) is adopted to amend former Subsection 3173 (a) to standardize statewide visitor processing to include verification of approved status and mandate the use of the CDC Form 1000, Visitors Pass.

Subsection 3173 (b) is adopted to retain former Subsection 3173 (b) to require that all visitors present proof of identity when visiting. CDC has a clear interest in positively identifying all individuals upon entry and exit of the security perimeter. The former requirement to present picture identification will now apply only to visitors age seven or older. This revision acknowledges that facial features of young children change dramatically and quickly in a short period of time. Therefore, verification of the identity of visitors under seven will now require only presenting a certified copy of their birth certificate or abstract of birth when visiting. The list of acceptable proofs of identity has been expanded to include all valid drivers' licenses and passports with pictures, and identification issued by the Mexican Consulate. However, since the identification issued by the Mexican Consulate is temporary in nature, it shall not be accepted for more than 60 days from the initial visit.

Subsection 3173 (c) is adopted to retain former Subsection 3173 (g) specifying procedures for processing minor visitors escorted by an adult other than the parent or legal guardian. Clarifications have been made as to the documentation required and this subsection now specifically references new Section 3173.1 (formerly Section 3170.5) regarding prohibited/restricted visiting with minors. To address problems experienced in the past when only one parent in a joint custody arrangement approved the visiting of a minor, written approval will now be required from both parties.

Section 3173.1 is adopted to retain former Section 3170.5 implementing the child victim visiting restrictions of Penal Code 1202.05. Information in the former subsection has been consolidated and procedural material removed. Penal Code Section 273 (d) is added to the list of included offenses to prohibit visiting for the conviction offense of cruel and inhuman corporal punishment of a child. A new provision is added to allow prohibition or restriction of visiting with a child where substantial evidence of the misconduct set forth in Subsection 3177 (b) (1) exists with or without a criminal conviction. The type of evidence contemplated here could come from a Board of Prison Terms hearing or a revocation hearing when a District Attorney declines to prosecute. The misconduct referenced in the subsection includes violent child and family or sexual conviction offenses listed in former Subsection 3174 (e) (1) that would cause a denial of family visiting privileges. This provision is optional and substantial evidence is required for it to apply. It is intended to give visiting staff a tool to facilitate Section 3170 that allows the restriction of visiting as needed to

keep people safe. It is expected that this option will give visiting staff the ability to protect visiting children when necessary and appropriate.

Subsection 3173.2 (a) is adopted to retain former Subsection 3173 (e) advising that any person coming onto institution/facility grounds are subject to search as necessary for security and to prevent the introduction of contraband. The types of searches that may be completed are now detailed in the regulation.

Subsection 3173.2 (b) is adopted to retain former Subsection 3177 (c) (3) (C) describing conditions under which visitors may be forcibly detained and/or searched. This subsection emphasizes that visitors shall not be forcibly searched without a search warrant or probable cause to believe that evidence of a crime is being destroyed.

Subsection 3173.2 (c) is adopted to restate for clarity that all visitors must submit to contraband and/or metal detection devices and a thorough search of all personal items before being allowed to visit with an inmate. This provision retains former Subsection 3173 (p) specifying processing procedures for visitors with medical implants or prosthetic devices that cannot clear the metal detector. It continues the requirement for an authorization letter confirming the nature and location of the implant and extends the required renewal period for verification from one to two years.

Subsection 3173.2 (d) is adopted to retain former Subsection 3173 (q) regarding processing procedures for visitors requiring a wheel chair. Visiting staff will be granted some latitude when a state wheel chair is not available or when a person cannot safely transfer from their wheelchair to a state wheelchair.

Subsection 3173.2 (e) is adopted to ensure the attendance of medical staff when a visitor who uses a medical implant, prosthetic device, or wheel chair is subject to an unclothed body search. This requested change is added as a prudent measure under these circumstances.

Subsection 3173.2 (f) through (h) are adopted to retain the provisions of former Subsection 3173 (f) regarding the process and documentation required when a visitor is subject to a search beyond what would be considered routine. The former subsection has been broken down into three new subsections for clarity. New Subsection (f) contains the former requirements that the visitor be informed of the reason for the search and that permission for the search be granted by the visitor. It also now mandates use of CDC Form 888, Notice of Request for Search, to standardize this process statewide. New Subsection 3173.2 (g) retains the provisions of the former subsection denying visiting privileges for that day if the search is refused, and new Subsection 3173.2 (h) retains the former provisions for documentation. To make the process consistent statewide, language is added to require use of CDC Form 887-A, Notice of Visitor Warning/Termination/Suspension/Denial/Revocation.

Subsection 3174 (a) is adopted to retain and combine former Subsections 3171 (b) (1) and (2) regarding dress standards for visitors. Clarifying language has been added to emphasize the need to maintain a visiting environment appropriate to all ages and modesty as the standard for dress. A requirement that visitors wear undergarments has been added to reflect current practice.

Subsection 3174 (b) is adopted to add two new requirements reflecting current practice for female visitors. Non pre-pubescent females must wear a brassiere when visiting. Metal underwires are not allowed since they cannot clear the metal detector and are considered to be potential escape paraphernalia. A slip will also be required when skirts and dresses are translucent. This section adopts a basic standard of modesty and endeavors to minimize titillation in the visiting environment.

Subsection 3174 (c) is adopted to establish a new subsection to specifically address prohibited attire for visitors.

Subsection 3174 (c) (1) is adopted to retain former Subsection 3171 (b) (3) to prohibit visitors from wearing clothing that resembles state-issued inmate clothing.

Subsection 3174 (c) (2) is adopted to add a requirement to prohibit visitors from wearing law enforcement or military-type clothing to ensure that visitors are not confused with staff. This is current practice.

Subsections 3174 (c) (3) through (9) are adopted to set minimum modesty and decency standards for visitors' attire to ensure that an appropriate visiting environment is maintained and conducive for all visitors, particularly children. These standards reflect long-standing practice at most institutions.

Subsection 3174 (c) (10) and Subsection 3174 (d) are adopted to exclude certain clothing and headwear that may be used to conceal contraband. Exceptions are granted with prior approval based upon verified individual needs and weather conditions. Subsection 3174(d) requires inspection of any articles approved under Subsection 3174 (c) (10) prior to visiting, and is current practice.

Subsection 3175 (a) is adopted to provide clear notice to all inmates and visitors that they must comply with the laws, regulations and procedures governing visiting. The penalties for violations are listed and the description of the process for applying sanctions in Section 3176 is referenced.

Subsection 3175 (b) is adopted to ensure that the accompanying adult properly supervises visiting minors.

Subsection 3175 (c) is adopted to bring CDC into compliance with State Law to allow nursing mothers to breast-feed their infant while visiting an inmate.

Subsections 3175 (d) and 3175 (e) are adopted to retain former Subsection 3170 (g) to allow inmates and their visitors to hold hands while visiting and to allow visitors and inmates to kiss and embrace at the beginning and end of the visit. A limit of five seconds had been added to the kiss and embrace to standardize what is common practice at most institutions.

Subsection 3175 (f) is adopted to allow inmates to hold young children in their laps. CDC supports this requested change to facilitate the bonding of young children with their parent. However, to address problems experienced in the past with some inmates, children seven years of age and older are prohibited from sitting on a male inmate's lap while visiting. This restriction attempts to balance the competing needs of facilitating male bonding with young children while guarding against the potential for child molestation. The age of seven was selected to accomplish this balance. No similar restriction is placed upon female inmates given the relative desirability of mother/child bonding and a very low propensity for child molestation.

Subsection 3175 (g) is adopted to retain that portion of former Subsection 3170 (g) that limited bodily contact during visiting to those listed in this section.

Section 3176 is adopted to retain and update former Section 3177 that sets forth the actions (approve, deny, suspend, revoke, terminate, restrict, and reinstate) which may be taken by the institution head or designee to administer the inmate visiting program.

Subsection 3176 (a) is adopted to retain and update former Subsection 3177 (c) (11) authorizing the supervisor in charge of visiting to deny, terminate, or restrict visiting under certain circumstances. This section organizes the reasons for denying, terminating, or restricting a visit in one place for easy reference.

Subsection 3176 (a) (1) is adopted to retain former Subsection 3177 (c) (11) (A) listing a visitor appearing intoxicated or under the influence of drugs as a cause for denial, termination or restriction of a visit in progress. The language now includes being under the influence of other substances, and retains the condition that the person's presence poses and undue threat to safety of self or others or to the security of the institution/facility.

Subsection 3176 (a) (2) is adopted to consolidate several causes for denial, termination, and restriction of visiting in one regulation governing situations in which visitors fail to provide proper identification or documentation as prescribed.

Subsection 3176 (a) (3) is adopted to retain former Subsections 3177 (c) (3), 3177 (c) (3) (A), and 3177 (c) (3) (B) governing visitor refusal to submit to a search or inspection of their person, vehicles, or property brought onto institution/facility grounds. Subsection 3177 (c) (3) (B) has been completely rewritten for clarity and understanding. There is no change in the policy.

Subsection 3176 (a) (4) is adopted to retain former Subsection 3177 (c) (11) (G) authorizing denial, termination, or restriction of visiting for serious violations, repeated less serious violations, and disregard for warnings regarding violations. Appropriate cross-references to Sections 3314 and 3315 have been added.

Subsections 3176 (a) (5) through (8) are adopted to retain former Subsections 3177 (c) (11) (B) through 3177 (c) (11) (E) detailing several reasons for denial, termination, or restriction of visiting. These sections address inappropriate dress, unaccompanied minor visitors without documentation, and a failure or refusal to meet verification or documentation requirements for persons with implants or in wheelchairs. These provisions reflect long-standing policy and no change is intended.

Subsection 3176 (a) (9) and 3176 (a) (10) are adopted to retain and clarify former Subsection 3177 (c) (11) (F) that provides criteria for terminating visits when the visiting area becomes overcrowded. Exceptions to the termination policy have been added for those who have traveled excessive distances, weddings, disability, family emergencies, and infrequent visitors. Requested standardization of these exceptions is accomplished with these additions. The criteria and specific standards for exception listed in the new Subsections 3176 (a) (9) (A) through 3176 (a) (9) (E) are the same criteria used to authorize Excused Time Off for visiting found in Subsections 3045.2 (e) (2) (B) through 3045.2 (e) (2) (F), and reflect current practice.

Subsections 3176 (b) and 3176 (b) (1) are adopted to retain former Subsection 3177 (c) (10) authorizing the revocation or suspension of an approved visitor's future visits under certain circumstances. Subsection (b) introduces this process and specifically cross-references the sanctions in Section 3176.1. Subsection (b) (1) includes receipt of information that would have resulted in a denial if known when an application was approved as the basis for revocation. This is consistent with the former regulation, current practice, and is repeated verbatim in Subsection 3176.1 (h) in the Visitor Violation Process Section.

Subsection 3176 (b) (2) is adopted to retain and update former Subsection 3177 (c) (11) (G) to authorize revocation or suspension of visiting privileges for serious or multiple-less-serious violations of CDC regulations.

Subsections 3176 (c) is adopted to retain that portion of former Subsection 3177 (c) (12) that requires written notification to the visitor of any denial, termination, or restriction of visiting and adds the requirement that the notification contain information regarding their right to appeal the decision.

Subsection 3176 (d) is adopted to retain verbatim former Subsection 3177 (c) (13) limiting temporary security measures regarding visiting to restriction when an inmate is scheduled for a classification or serious violation hearing. No change in policy is intended.

Section 3176.1 is adopted to retain former Section 3172 that authorized termination, suspension, restriction or denial of visiting as the types of penalties that could be imposed as a consequence for misconduct by a visitor. This preamble section emphasizes that the violation process applies to all laws, rules, or regulations administered by CDC. The primary objective in adopting 3176.1 is to standardize the sanction process system-wide for dealing with misconduct by inmate visitors. It is important to have the consequences for misconduct reduced to writing for the benefit of staff, inmates, and visitors so expectations are clear. This process is intended to promote the initially stated objectives for inmate visiting by making the process explicit while providing sanctions severe enough as to be meaningful to those who engage in misconduct. Care has been taken to devise a system that encourages compliance, not punishment, and the decision to apply sanctions is for the most part optional depending upon the circumstance – once again emphasizing corrective action.

Subsection 3176.1 (a) is adopted to include the use of a verbal or written warning to correct visitor misconduct and sets up subsequent subsections that provide progressively more severe consequences commensurate with the seriousness of the violation. The warning is intended for use for less serious violations with the goal of achieving corrective action. If the verbal warning achieves corrective action, the requirement for a written report is waived.

Subsection 3176.1 (b) is adopted to authorize termination of a visit when less serious violations recur following a warning or for serious violations described in Subsection 3315 (a). Written documentation is required when taking this more punitive action as described in Subsection 3176.1 (i). As the second option in the progressive listing, terminating the current visit gives the visitor an opportunity to correct their behavior on a subsequent visit. If the termination is for a serious violation, it will generally be accompanied by a suspension.

Subsections 3176.1 (c) through (e) are adopted to provide for progressive consequences for repeat or more serious violations. These subsections include suspensions of visiting for up to one, three, and six-month periods depending the seriousness of the violations or number of written warnings.

Subsection 3176.1 (f) is adopted to authorize a suspension of visiting for up to twelve months when a visitor is involved in criminal activity on institution/ facility property that results in a misdemeanor conviction. Because of the significant time period involved, only the institution head may impose this suspension.

Subsection 3176.1 (g) is adopted to authorize a suspension of visiting for up to twenty-four months when a visitor is involved in criminal activity on institution/ facility property that results in a felony conviction. Again due to the significant time period involved, only the Deputy Director of the Institution Division of CDC may impose this suspension.

Subsection 3176.1 (h) is adopted to retain and update former Subsection 3177 (c) (10) to authorize revocation of approval for visiting when new information subsequently becomes available which would have resulted in a denial. This subsection regarding revocation is repeated verbatim in Subsection 3176 (b) (1).

Subsection 3176.1 (i) is adopted to retain former Subsection 3177 (c) (12) to require documentation of all non-verbal warnings, terminations, suspensions, and revocations. This subsection will now require notification to the visitor on CDC Form 887–A that includes the reasons for the action and the visitor's right to appeal the action. This standardizes the process system-wide.

Section 3176.2 is adopted to retain former Subsection 3177 (c) (4) procedures when the official in charge of visiting determines that a visitor has committed a violation of state law on institution/facility property. This Section has been reorganized to highlight the actions to be taken following various dispositions, clarifies that the visitor may be referred for prosecution, and continues to make a specific reference to possible restrictions of visiting in Section 3176.1. No change of policy is made.

Section 3176.3 is adopted to place several provisions relating restrictions, revocations, and suspension of an inmate's visiting privileges in one section and to incorporate referenced material from Section 3315 directly into in the visiting section of the regulations for easy reference. This introductory section begins with the clarification that the suspensions of inmate visits in this section do not apply to visits from an attorney or attorney representative.

Subsection 3176.3 (a) is adopted to retain former Subsection 3177 (c) (9) (C) to establish temporary non-contact visiting restrictions as a necessary security measure pending a disciplinary hearing for certain serious or visiting violations. This subsection clearly specifies the process to be used and limits the delegation authority of the institution head for taking such actions. The revisions are for clarification and no change in policy is intended.

Subsection 3176.3 (b) is adopted to incorporate the provisions of Section 3314 in the visiting section of the regulations regarding the option of the hearing officer to impose up to 30 day restrictions following an administrative rules violation hearing for visiting related misconduct. This is for easy reference.

Subsection 3176.3 (c) is adopted to cross-reference the mandatory restrictions to be imposed by the hearing officer in accordance with Subsections 3315 (f) (5) (H) and 3315 (f) (5) (I) for drug-related violations defined in Subsection 3323 (c) (7) and (d) (6). The restrictions are loss of visits for one year followed by non-contact visits for two years for distribution and a progressive scale of loss of visits for 90 to 180 days followed by non-contact visits from 90 to 180 days for possession based upon the number of offenses. Subsequent subsections provide detail.

Subsection 3176.3 (d) is adopted to retain former Subsection 3177 (c) (11) (G) and cross-reference this subsection to Section 3315 that details the option of the hearing officer to suspend or restrict visiting for up to 90 days for certain serious rules or visiting violations listed or referenced. This reflects current practice.

Subsection 3176.3 (e) is adopted to retain and amend former Subsection 3177 (c) (9) (C) that authorized additional limitations and restrictions beyond the actions of a classification committee. To standardize what in the past has proved to be a more effective approach to this issue, this subsection now specifically authorizes a classification committee to take action to suspend or restrict visiting for certain serious or visiting violations. This approach has proven the most efficient and implements current practice. The suspensions and restrictions listed are restated directly from and consistent with Section 3315 and are intended to provide a system-wide standard.

Subsection 3176.3 (f) is adopted to retain former Subsection 3173 (l) (3) to continue to require the inmate to notify visitors of a change in their visiting status. This is long-standing policy and generally reflects the rationale that since the actions of the inmate have caused the change, the inmate should be responsible for notification of their visitors.

Section 3177 is adopted to retain and amend former Section 3174 to allow inmates to receive family visits. The regulations specify the institutions provide the necessary accommodations at no cost to the inmate or the visitor. Each institution currently has small apartment style units for this purpose. The officer assigned to family visiting is responsible for searching all items being brought into the institution/facility for family visiting. This can be a rather tedious task since each visitor is authorized to bring clothing, limited cosmetic items, personal hygiene items, and in the past food items. Current regulations require all food to be purchased from the institution if visiting occurs within the security perimeter. Since virtually all family visiting currently occurs inside the security perimeter, requiring the purchase of food from the institution, the necessity to bring food items to any institution is being eliminated. To standardize what visitors may expect at all institutions, the mandatory purchase of food from the institution will be extended system-wide for consistency.

Current regulations do not require conservation camps to provide family visiting. However, since most camps are capable of providing family visits and most are currently doing so, it will now be required. Given the relative small size, staffing, and remoteness, conservation camps are not set up to provide food for visitors to purchase; therefore visitors are required to bring their own food.

The new section now requires a family visiting coordinator and menu to accommodate a variety of nutritional selections. The family visiting coordinator is specified as the person with whom to make arrangements for purchase of food. The visiting menu requirement is made in order to accommodate various visitors' and inmates' dietary requirements and to provide variety for personal

preferences. The new subsection also clarifies the reference to Section 3000 that limits family visiting to immediate family members only and does not include common law relationships.

Subsection 3177 (a) is adopted to retain former Subsection 3174 (a) that permits family visiting by verified foster relatives with prior approval from the institution head. No change in policy or practice is made.

Subsection 3177 (b) is adopted to retain former Subsection 3174 (e) verbatim stating that family visiting is a privilege and eligibility limited by the work/training incentive requirements of Section 3044. No change is made.

Subsection 3177 (b) (1) is adopted to retain former Subsection 3174 (e) (1) verbatim to prohibit family visiting for inmates convicted of sexual offenses, spousal abuse, and sexual abuse. Penal Code Section 243.5 has been added to include sexual battery as a disqualifying offense.

Subsections 3177 (b) (1) (A) and (B) are adopted to restate the provisions of new Section 3173.1 that authorizes the option of prohibiting visiting when conduct detailed in Subsection 3177 (b) (1) is determined to exist, even though there is no criminal conviction. . For instance, a parolee could have had their parole revoked for child molestation or could have had their visit terminated for molesting a minor child, yet was not prosecuted nor convicted of the crime. The evidentiary burden chosen is substantial evidence because this same evidentiary burden exists for denial of good time credits for disciplinary infractions under Penal Code Section 2932(c)(5) and CCR Subsection 3320(l). Again, the CDC is responsible for the safety of visitors. Since family visiting takes place in an unsupervised area, it is of the utmost importance that the CDC only approves family visits to inmates that have no history of such offenses.

Subsection (A) basically applies appropriate Section 3173.1 language specifically to family visiting and Subsection (B) provides the basis for such action by restating and applying the language of Section 3170 to maintain order, the safety of persons, and institution security specifically to family visiting.

Subsection 3177 (b) (2) is adopted to retain former Subsection 3174 (e) (2) virtually verbatim in prohibiting family visiting to certain categories of inmates. No change in policy or practice is made.

Subsection 3177 (b) (3) is adopted to ensure that family visiting is conducted only in CDC institutions and conservation camps. Since CDC contracts services with privately operated facilities that cannot accommodate family visiting, this subsection clarifies that family visiting is not allowed in such facilities.

Subsection 3177 (c) is adopted to retain and clarify former Subsection 3174 (c) prohibiting family visiting by unescorted minors with certain exceptions unless approved by the institution head. This subsection basically restates general

provisions applicable to all minor visitors from Subsections 3172 (b) and (c) in the family visiting section for clarity. No change in policy is made.

Subsection 3177 (d) is adopted to retain and update former Subsection 3174 (d) prohibiting family visits when regular visiting has been restricted, suspended, or denied. This subsection retains the provision that also allows for restriction, suspension, or denial of family visiting without such action affecting eligibility for regular visiting. No change in policy is made.

Subsection 3177 (e) is adopted to authorize inmate disciplinary action for willful damage or failure to maintain the Family Visiting Program Unit.

Subsection 3177 (f) is adopted to ensure visitors arrive at the designated time for intake processing unless other arrangements have been made. This creates a standardized deadline for family visitor arrival at intake processing throughout CDC and provides a sanction for failure to do so.

Subsection 3177 (g) is adopted to require inmates with disability requiring accommodation for family visiting give at least 72 hours advance notice. This provides staff an opportunity to make any necessary arrangements.

Section 3178 is adopted to retain and amend former Subsection 3175 (d) to specifically outline the process required for an attorney to visit an inmate. This section restates that identity and criminal record checks are required of all visitors and that the attorney's credentials and written consent from the inmate must be verified. These requirements are detailed in Subsections 3178 (e) (1) through (5) below. This approval/clearance to visit is granted to the attorney for a period of two-years, which parallels the two-year reapplication process for other visitors.

This preamble section also incorporates former Subsection 3175 (q) verbatim indicating that these regulations do not apply to student assistants or student programs under contract with the Department, institutions, or law schools. This ensures that student assistants are not authorized the same privileges as an attorney or attorney representative when the students are under the jurisdiction of the CDC. Individual agreements are typically utilized to provide guidelines for student assistants. The guidelines detail their responsibilities and authority. This section also clarifies that these regulations apply to all attorneys licensed to practice not just those who are licensed to practice in this state. Both of these provisions represent current policy and practice.

Subsection 3178 (a) is adopted to retain and strengthen former Subsection 3175 (a) to mandate the accommodation of attorney visits during regular visiting hours. This section continues to express a preference for weekday consultation when possible. New Subsections 3178 (a) (1) and (2) establish a process for obtaining approval for attorney visits outside of established visiting hours when the schedule does not include normal business hours.

Subsection 3178 (b) is adopted to retain former Subsection 3173 (a) as it applies in establishing where attorney visiting is permitted. Most institutions utilized rooms adjacent to the visiting room for attorney visits. A new section is added to allow a contact attorney visit to an inmate on non-contact status when a compelling need exists.

Subsection 3178 (c) is adopted to retain and amend former Subsection 3175 (f) authorizing the designation of attorney representatives. This subsection has been rewritten to include court designations and remove the limit of two representatives. New Subsections 3178 (c) (1) (A) through (E) detail the procedural requirements for designations. Also repeated here for easy reference is the required identifying information that must be provided by all visitors.

Subsection 3178 (d) is adopted to retain virtually verbatim former Subsection 3175 (g) that lists approved attorney representatives. No change is made.

Subsection 3178 (e) is adopted to retain former Subsection 3175 (b) that permits attorney visits through the regular visiting process when appropriate. This allows the attorney or attorney representative to utilize the visiting room in lieu of the attorney room in the event the attorney does not make an appointment or require confidentiality. This also allows the attorney or representative the ability to see the inmate whenever regular visiting is conducted which can expedite a meeting if necessary.

Subsection 3178 (e) (1) is adopted to clarify that all attorney and attorney representatives not previously approved to visit at the institution/facility are subject to the general visiting application requirements of Section 3172 in addition to the requirements of this section. This ensures that the attorney or attorney representative is properly processed into the institution.

Subsection 3178 (e) (2) is adopted to retain former Subsection 3175 (c) setting forth the requirements for advance notice to the institution/facility if private accommodations are desired for an attorney visit. The attorney and attorney representative will be required to notify the institution and schedule a visit at least 24 hours in advance. This is to ensure the institution has an attorney room available and to ensure the inmate is available. Attorneys and representatives not previously approved to visit must provide 48-hour advance notice. Emergency appointment requests from attorney or attorney representative must be authorized by the institution head.

Subsection 3178 (e) (3) is adopted to retain that portion of former Subsection 3175 (d) that requires attorneys to verify good standing in the state bar association and provide written consent or a court order for the attorney's visit. These requirements are in addition to regular visiting requirements. This subsection also requires attorneys be processed in the same manner as other visitors, except as provided in the section.

Subsection 3178 (e) (4) is adopted to make certain specified exceptions to the visitor application processing and documentation requirements of Section 3172 for attorney representatives. The exceptions are to general provisions requiring visitors receive applications and approval decisions from the inmate. In the case of attorney visits, staff may provide the application and are responsible for informing the prospective attorney representative of the decision to approve or disapprove the application.

Subsection 3178 (e) (5) is adopted to retain that portion of former Subsection 3175 (f) requiring that an attorney representative be afforded the same accommodations and services as an attorney, if all other requirements of the section are met.

Subsection 3178 (f) is adopted to provide a process to accommodate attorney requests to see inmates who have not previously provided written consent. This accommodation is available when follow-up is needed on information obtained from another inmate that may assist the attorney in preparing their client's case. This section also imposes a "reasonableness" test on the request and allows denial if the request imposes an unreasonable burden on staffing or is unduly disruptive. This could include an attorney wanting to see too many inmates or within a timeframe that disrupts an institution function, such as the counting or feeding of inmates

Subsection 3178 (g) is adopted to retain that portion of former Subsection 3175 (d) allowing the institution head to require verification of the attorney-client relationship when there is reason to suspect abuse of the privilege of private consultation with the inmate. This could occur if an attorney utilized their attorney privilege to merely visit an inmate. CDC has also experienced situations where attorneys have utilized the privilege of confidentiality to circumvent CDC security and been found in compromising situations.

Subsection 3178 (h) is adopted to retain that portion of former Subsection 3175 (f) limiting the number of attorneys or attorney representatives that can visit at one time. This section allows exceptions by the visiting official and makes reference the possibility of space limitations established elsewhere in this article.

Subsection 3178 (i) is adopted to retain former Subsection 3175 (k) allowing for the exchange and attorney retention of documents following inspection. No change is made in policy or practice.

Subsection 3178 (j) is adopted to retain that portion of former Subsection 3175 (j) that ensures attorney-client privacy by prohibiting listening to or monitoring of attorney-inmate conversations. An exception is added for that visual observation by staff for required for safety and security. While retaining the clear intent to provide the confidentiality contemplated by this regulation, the change balances that intent with operational necessity. This reflects current practice.

Subsection 3178 (k) is adopted to provide a specific process for requesting depositions of inmates. This is current practice.

Subsections 3178 (l) and 3178 (l) (1) are adopted to retain former Subsection 3175 (n) allowing the audio recording of the inmate interview by attorneys and attorney representatives. This subsection also retains the requirement that CDC make audio recording equipment available for use. This is current practice.

Subsection 3178 (l) (2) is adopted to add the clarification that the attorney must provide factory sealed audiotape (s). This clarification reflects current practice.

Subsections 3178 (m), 3178 (m) (1), and 3178 (m) (2) are adopted to retain former Subsection 3175 (o) to allow attorneys and attorney representatives to make video recordings of the inmate interview. While some clarifications are made, this reflects current practice.

Subsection 3178 (m) (3) is adopted to add the clarification that the attorney must provide factory sealed videotape (s). Again, this practice is in place.

Subsections 3178 (n), 3178 (n) (1), and 3178 (n) (2) are adopted to retain former Subsection 3175 (l) that allows inmates to retain documents given to them by the attorney or attorney representative during the visit. Several clarifications are made. New Subsection 3178 (n) clarifies the former section to make clear that all documents brought to the security area are subject to search for contraband. Subsection 3178 (i) above provides for an inspection prior to any exchange of documents. This subsection details how the items will be inspected. To ensure privacy, staff are limited to inspecting the contents and not reading the material. New Subsection 3178 (n) (1) also clarifies that inspecting staff shall not read any part of a legal document without consent. The new Subsection 3178 (n) (2) retains previous limits on the extent of the inspections and need for confidentiality unless the contents pose a threat to security or safety. This is current practice.

Subsection 3178 (n) (3) is adopted to retain former Subsection 3175 (m) that described the process to be followed if the inmate does not consent to an examination of the contents of documents obtained from the attorney or attorney representative. While the process has not changed, the procedural material, already detailed in Subsection 3145 (b), has been removed, and is simply referenced in the subsection. The procedural material will be maintained in the Department Operations Manual. No policy or practice change is made.

Subsection 3178 (o) is adopted to clarify former Subsection 3175 (p) make clear that attorneys are only permitted to attend or participate in conferences or committee meetings of staff and the inmate concerned that are authorized in these regulations. This clarification removes some ambiguity in the previous regulation and ensures understanding that unless specifically authorized by this article, all requests require prior approval from the institution head or designee.

Nothing in this regulation precludes the attorney from requesting such approval or submitting written views and comments to the institution on matters affecting the inmate.

Subsection 3178 (p) is adopted to establish that administrative action may be taken to restrict, for cause, confidential and/or normal visiting privileges afforded to an attorney or attorney representative. This clarifies current policy and practice. The subsection also presents a new progressive schedule of sanctions for attorney or attorney representative misconduct. These provisions parallel other progressive sanctions introduced in this article. They begin by seeking understanding and compliance, and move to harsher penalties for those who continue to break the rules. As with other sanctions, it is the intent of these provisions to secure corrective action reserving punishment as a last resort.

Subsection 3178 (q) is adopted to retain and expand former Subsection 3175 (r) to require notification of the Director, or a designee, when administrative action is taken to restrict visiting privileges of an attorney or attorney representative. This is current policy and practice.

Subsection 3178.1 (a) is adopted to retain former Subsection 3176 (a) that authorizes the Director or an institution head to bar a person for cause from entering an institution/facility of the Department. This subsection makes clear that any person, including employees of the Department, attorneys, members of the news media, or delivery persons may be excluded and describes the process for issuing an exclusion order. This subsection limits the delegation authority of the Director and institution head for excluding persons, and reflects current practice.

Subsection 3178.1 (b) is adopted to retain former Subsection 3176 (b) that established specific criteria for issuing an exclusion order. The criteria included individuals who present a threat to security, who have been charged with or are under investigation for a serious crime committed on institution property, or whose business purpose for access is no longer valid or has been lawfully terminated. The criteria have been rewritten for clarity and expanded to include more serious acts. Excludable persons will now include those being charged with any felony or under investigation for a felony committed on institution/facility property. This subsection also specifically cross-references attorney exclusions for offenses described in Subsection 3178 (q).

Subsection 3178.1 (c) is adopted to retain that portion of former Subsection 3176 (b) allowing for temporary exclusion, and makes it a separate section. Temporary exclusion is similar to a suspension, but does not contain a time frame since it relates to the investigation or verification of information that may lead to exclusion and/or prosecution. This revision is made for clarity and no change in policy or practice is made.

Subsection 3178.1 (d) is adopted to add a new subsection to clarify current policy that only the Director may issue an order to exclude a person from all departmental institutions/facilities. This reflects the seriousness of taking action to exclude a person and merits review at the highest level of the Department. This subsection also clarifies that an institution head may only exclude a person within their jurisdiction.

Subsection 3178.1 (e) is adopted to retain former Subsection 3176 (c) that required immediate notification to the Director when the excluded person is an inmate's attorney or the matter may have department-wide significance. This subsection also requires that a written report be provided to the Director within two days of the effective date of all exclusion orders.

Subsection 3178.1 (f) is adopted to retain virtually unchanged former Subsection 3176 (d) requiring written notification to the person excluded and an opportunity to review the matter with appropriate officials, including an appeal to the Director. This subsection details the procedures and timeframes for all actions related to the exclusion and the notifications and reports required. This reflects current policy and practice.

Subsection 3179 (a) is adopted to retain and combine former Section 3178 and Subsection 3178 (a) that establishes the process for inmates and visitors to appeal policies, staff decisions, or institution/facility procedures relating to visiting. This new subsection now makes a clear distinction between the inmate appeal process, detailed in Sections 3084 through 3085, and appeals by visitors that are to be submitted to the institution head in writing. The process allows the parties involved to review the action and either amend the decision, uphold the decision, or retract the decision. It reflects current policy and practice.

Subsection 3179 (b) is adopted to retain that portion of former Subsection 3178 (b) that established time frames for institution head response to the appeal and the option of appealing the decision to the Director if dissatisfied. The institution head has 15 working days to respond to the appeal. This is the current policy and practice.

Subsection 3179 (c) is adopted to retain that portion of former Subsection 3178 (b) establishing time frames for response when an institution/facility decision is appealed to the Director. The Director has 20 working days to respond to an appeal. This also is current policy and practice.

Subsection 3179 (d) is adopted to ensure that all applicable parties are notified of any appeal decisions and that appropriate documentation is maintained in this regard. This subsection also requires prompt approval or restoration of all privileges if the investigation determines that no violation of rules, regulations, or procedures took place.